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December 1, 1995

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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Re: Docket No. 93-144

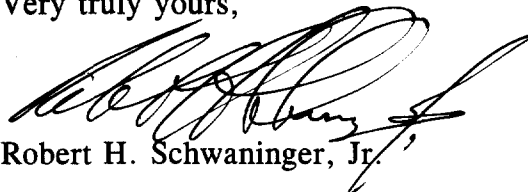
Dear Sir or Madam:

On behalf of the persons and entities identified herein as Participants, we hereby file the instant Memorandum to the National Telecommunications and Information Administration of the United States Department of Commerce, to be included as a portion of Rule Making Docket Number 93-144, pending before the Commission.

The original Memorandum has been filed with the NTIA, and this copy is intended to inform the Commission of the contents contained therein and to notify the Commission such action has been taken by Participants, requesting that the NTIA review the proposals within the above-captioned rule making.

If there are any questions regarding the following, please contact our offices.

Very truly yours,

  
Robert H. Schwaninger, Jr.

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# **DAY OF RECKONING**

## **THE EFFECT OF DISPLACEMENT OF PRIVATE SECTOR RADIO LICENSEES ON THE DEMAND FOR SPECTRUM FROM THE FEDERAL GOVERNMENT**

Including an Overview Of the Adverse  
Effects of Adoption of the Proposals  
Contained in FCC Docket 93-144  
And Request For Participation

Submitted For Consideration By  
National Telecommunications and Information Administration  
Office of Policy Analysis and Development  
United States Department of Commerce  
Washington, D.C.

December 1, 1995

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## **Foreword**

In 1993, the Omnibus Budget Reconciliation Act passed by Congress and signed into law by the President, forever changed the regulatory landscape for the distribution, licensing and operation on scarce radio spectrum. Charged with inefficient use of the radio spectrum, the Department of Commerce was required to bring forth blocks of spectrum for use by the private sector to relieve the demand which interested parties insisted was present in the private sector. The spectrum blocks to be reallocated from federal to private use were expected to be auctioned by the FCC. Standing committees to study the reallocation were created and some private businesses began devising long term strategies which include uses of the federal spectrum following its availability. The DOC has taken great strides toward clearing spectrum in accord with the 1993 Act and is moving toward eventual full compliance.

Yet, while the DOC is preparing to comply with the demands of the Act, the FCC has not stood patiently by, waiting for the day that large reallocations would come to pass. Instead, armed with its newly granted auction authority, the FCC is acting to put on the block all spectrum which might conceivably be employed for operation of wide-area telecommunications systems; and the agency has moved quickly to establish auctions as its chosen method for deciding between mutually exclusive applications. The FCC's zeal in bringing to bear its auction authority is having a resultant effect on the demand for government spectrum. This paper is intended to open the debate as to whether the FCC's actions are creating undue demand for spectrum reallocation via displacement, and whether such fueling of demand is a negative

byproduct of the FCC's exercise of auction authority. This paper is also intended to provide a brief overview and some insights into the present private demand for spectrum and whether the FCC's participation in driving auctions will result in long term negative effects on the stability of the telecommunications industry and the future availability of radio spectrum to serve the needs of the federal government.

### **Demand For Radio Spectrum**

#### **By Publicly Traded Corporations**

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Demand for radio spectrum is fueled by many sources, primarily those persons and entities which insist that operation of emerging technology on exclusively allocated spectrum is required to bring to the market new services. Such new services include High Definition (or Advanced) Television, Personal Communications Services, interactive services and increased offerings of land mobile radio or mobile data services.

Often lost in the debate, however, is the underlying financial incentives in bringing to the market new spectrum reserves. Radio spectrum was formerly viewed as an electronic means to deliver services to the marketplace. Now, companies have adopted the view that spectrum is purely a commodity which alone is deemed a valuable asset that translates its value to the bottom line of corporations and fuels stock purchasing decisions. This phenomenon began to take root with the introduction of cellular radio services and the valuation techniques for

businesses which sprang from regional then nationwide paging efforts. Given the speed in which new companies and services were coming to the market and the optimism regarding each's ability to deliver future profits, analysts began employing new methods of valuing telecommunications companies.

No longer were telecommunications companies being valued by analysts employing traditional profit and loss theories. Instead, reliance on spectrum inventory, cash flow, regulatory means toward exclusive use of spectrum, market based licensing, slow growth potential, per pop. calculations, and the deregulation of wide area integrated systems has changed the valuation methods for telecommunications companies. A review of many of the largest telecommunications concerns will demonstrate that the ability to make a profit, the former best indicator of a healthy marketplace and the efficient delivery of a valuable service, has been largely abandoned.

This change in valuation techniques, which continues to fuel the demand for stocks and bonds from publicly traded corporations, has provided a new path to financial success for many companies. Whereas, in the past, companies would point with pride to their after tax profits and dividends to shareholders, now telecommunications companies point to their cash flow (usually employed to service bond debt), dismissing the red ink at the bottom line as a natural byproduct of an aggressive merger and acquisition strategy, including the costs of build out and capitalization. Yet, despite these companies' seeming financial success and market acceptance, even the simplest consideration of the matter would lead one to declare that each of these entities

must someday, somehow demonstrate the ability to make a profit. Depending on the type of company and the services it provides, that "someday" may arrive within one year or five years or may not arrive for over a decade. For purposes of this discussion, the event which is the imaginary day upon which investors demand profitability from each individual company shall be referred to herein as "reckoning."

To forestall the inevitable erosion of confidence in companies which continue to fail to show a profit and to delay or finesse away the effects of reckoning, many of these telecommunications concerns allow themselves to be sold to larger telecommunications giants. Indeed, many companies are now created with the specific intent of positioning themselves for future sale. The sale creates greater concentration of spectrum resources in the hands of fewer entities, which continue to increase their offerings to the public, albeit within a less competitive environment. The American public loses an alternative competitive source of services. And often the services offered by the concentrated, larger concern are not equal to the local or regional carrier which previously existed. Greater emphasis on urban markets to the exclusion of rural and niche markets is often deemed more cost effective, and some communities, which might have supported smaller carriers' efforts, find that their limited population base is insufficient to attract the attention of the larger carriers. And jobs migrate from lesser populated areas to urban markets, following the ownership of the acquiring carrier.

The larger concerns often engage in faux price competition for consumer dollars. Unlike true competition, the price competition in the telecommunications industry often does not

represent economies of scale or lower costs for supplied goods or more efficient delivery of services. For example, consumers can now obtain paging services in major markets for as little as four dollars a month. The pager is bundled into the sale and the consumer is obligated to sign up for at least a year's service. However, one year of payments (excluding hidden charges such as mandatory insurance and maintenance contracts) would equal only approximately \$50 per year in revenue. Considering that the cost of a typical, new paging receiver is greater than \$50; and adding to that the carrier's costs of construction and maintenance of the radio paging system which supplies the signal, it is apparent that such pricing is intentionally undervalued. Although the consumer receives a short-term benefit in lower prices for services, the long-term effect of arbitrarily low prices, which do not compensate carriers for the cost of delivery of service and equipment, will eventually take its toll on the stability of the industry. However, the industry is presently allowed to sustain itself with investor dollars to offset unprofitable pricing techniques. This is, of course, a false method of gauging financial health if investors' are unknowingly investing in entities which are not committed to making a profit in the delivery of goods and services.

As explained above, the valuation methods of telecommunications companies now center on the commodity value of spectrum, combined with the ability to generate cash flow and consumer numbers. When traditional profit is given the lowest weight in the valuation equation, such marketing techniques are held to be prudent to obtain success in the financial markets. And since larger telecommunications companies have greater ability to delay reckoning, these methods of attracting financial support in the form of increased stock and bond sales (which also

delay reckoning) work in tandem to create a synergism of debt/cash flow valuation, providing a patina of corporate health.

In another environment, this use of investor dollars to offset unprofitable activity which is designed to provide the appearance of progress without the tangible proof of economic health would be referred to as "kiting." But for the accepted value of radio spectrum as a portion of the valuation techniques applied to telecommunications companies, kiting would not be able to delay reckoning for the long periods employed by corporate speculators.

Armed with the receipts from stock sales and bond offerings, these concerns then turn their attention to acquisition. Acquisition for acquisition sake is rampant throughout the telecommunications industry. Considering once again the threat of reckoning that will send stock prices plummeting, one of the most common methods of delaying reckoning is the acquisition of additional consumer numbers and commodity spectrum. Although the cost of acquisition would rarely justify the value to the company if a traditional profit analysis were applied, the achievement of greater acquisitions continues to support stock and debt offerings. This technique employed by many corporations to forestall reckoning through acquisition of greater commodity spectrum is driving the demand for more spectrum. One of the primary results of this corporate demand for spectrum to forestall reckoning is the effect on the federal government's efforts in reallocation.

Demand for commodity spectrum to employ as an identifiable asset within the books of a corporation becomes more intense as reckoning approaches. This intense demand has been channeled into lobbying efforts before Congress to provide broadcast entities 6 MHz of spectrum for HDTV, to create timetables for PCS auctions, to bring IVDS auctions forward, and many other indicators. Of the three previous examples, each may be viewed as wholly speculative, since the services to be provided by each have no proven record of consumer demand in the market sufficient to sustain the anticipated service. However, the appearance of innovation backed by the radio spectrum assets to potentially deliver the services, is sufficient to engage in further kiting and delay reckoning. It is also the primary impetus behind the demand for reallocation of spectrum from federal to private use.

It should be noted that other forces are present on the political landscape which have intensified the demand for spectrum reallocation. Companies and market segments have made bold claims regarding the new services and emerging technologies which will come from spectrum reallocation. Examples of interactive video services, HDTV, mobile satellite use, wide band data transmissions, location monitoring services, and many others are in constant view in trade journals and many a stock prospectus. Regrettably absent in these articles are any cost/benefit analysis to the American public or even to the corporations which claim that such services will be brought to the market through their individual energies. In sum, unfounded claims of pent up demand for services, which cannot be verified by employing any logical, scientific method, are often lofted and are unfortunately more often believed or presumed, further fueling the frenzy for reallocation of spectrum. One need only review the history of

Radio Determination Satellite Services to see how far entities may go with little more than an alleged patent for a new service.

Finally, the obvious use of the radio spectrum as a source for federal revenue is driving the reallocation process. Saddled with enormous debt, the federal government's quest to balance the budget through spectrum sales in cooperation with bidding companies that will employ the radio spectrum gained by auctions to delay reckoning, has become an unspoken cooperation between debtors seeking a mutual benefit. One debtor, the federal government, seeks revenue generation or the appearance of revenue generation, and other debtors, companies delaying reckoning, will pay at auction to add to their spectrum assets and increase their claims of future services which will be brought to the market.

The threat to the economy created by this cooperation is quite obvious. Since the acquisition of spectrum to delay reckoning is only a short term relief to the larger underlying problem of unprofitability, the government's participation actually facilitates the destabilization of the marketplace. Companies which employ auctions in this manner create greater debt loads on their books and the eventual consequence is felt by millions of shareholders whose purchasing decisions are reflected by the financial analysts whose recommendations are distracted from an examination of corporate profitability, and instead, focus on the corporate image enhancement that is a byproduct of successful auction participation. Such methods of valuation of stock cause prices to rise arbitrarily, creating an even greater risk of larger losses by shareholders upon reckoning, when stocks will plummet rapidly. As the federal government creates through

auction the potential for inflated stock prices, it increases the level of harm which will befall investors at reckoning.

Buoyed by its successes during FY1995, the federal government is seeking to increase its efforts in auctioning spectrum to private entities. However, given the effects that uncontrolled auctions will have on the overall financial stability of the telecommunications marketplace, there is reason for caution. The zeal to raise revenue for the U.S. Treasury must be balanced against the loss to the U.S. Treasury in taxes, as more and more telecommunications companies experience reckoning, creating large losses for investors which will reduce tax revenues. Although the availability of commodity spectrum is increased, there is no corresponding benefit in profitability of corporations which employ the current valuation techniques for sales of stock. The value of shares becomes increasingly illusory, and the risks associated with investment continue to rise at a dangerous rate.

### **Demand For Radio Spectrum**

#### **From Small Business**

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Unlike large, publicly traded corporations, small business does not have access to financial markets to reap investor dollars as a type of second income. The financial health of small business is measured in paychecks, mortgage payments, and rents. If these more pedestrian costs are met and there is sufficient money left over, the small business is deemed

successful and its owner achieves some degree of affluence. Debt financing of small business is similarly local in nature, opting for Main Street over Wall Street, most small businesses are begun with either private loans from family members or mortgage debt.

Small telecommunications concerns must then concentrate on true profitability, rather than mere image enhancement. The need to achieve true profitability within a shorter time period is seen in many ways. Small business is more conservative in its demand for radio spectrum. Although the commodity nature of spectrum is not lost on small business, the disproportionate regulation of small business versus large business in the use of spectrum, added to the limited resources of small business, requires that each successful small business must take all the spectrum it needs, but limit its appetite to only what it might use.

The cost of warehousing spectrum is too great to enable small businesses to engage in this activity on any grand scale. Although numerous small businesses may own a transmitter which is producing little more than a station identifier to enable it to serve future demand, large corporations will often have dozens of similar stations, and the largest companies may have hundreds of such spectrum placeholders.

This does not suggest that small telecommunications concerns are not profitable. Many are and some have produced large incomes for their owners, which incomes reflect true profits. However, the approach to spectrum management and profitability is far different when compared

to large concerns. Typically, the upper management/owners of large concerns have achieved wealth through sales of stock, not sales of service. The contrary is true for small business.

The need to constantly cover the cost of operations has a dramatic effect on small businesses approach to spectrum auctions. To date, auctions have typically been for large, wide-area use of frequency blocks to serve geographic areas that extend across several counties and, perhaps, states. With each auction comes the commitment that the anticipated service will be built throughout the targeted region. Although success at auction might enhance a small businesses opportunities in a given market, there exists the concurrent obligation to finance the build out of such systems, often in unprofitable areas. When considering the diverting of small business dollars to payment for radio spectrum at auction, rather than applying those same dollars to the construction of systems and employment of personnel, many small businesses opt out of the auction alternative. The risk of failure in the planning and construction of such systems is simply too great for small business.

Managers' willingness to accept risk in the auction environment is easily determined by and through the financing of participation. Whereas publicly traded corporations are employing investor dollars, thus spreading the risk over large pools of investors, small businesses take the risk personally with guarantees from owners or private investors. Failure does not equal reckoning in the sense of publicly traded corporations. Failure equals personal bankruptcy for the small business participant.

Although small business is, therefore, at a natural disadvantage at auction, the FCC has attempted to provide some means of access to auction for small business. Bidding credits and time payments have opened the doors a crack. But the difficulties which are being created for small business when the effect of the auction will curtail each's ability to continue natural growth and concurrent competitiveness, are not solvable by such techniques. The use of auctions is then a threat to the future existence of small business, rather than the opportunity it is sometimes touted to be.

For example, in Docket 93-144 the FCC is proposing to create blocks of spectrum at 800 MHz for operation of wide-area systems. Existing 800 MHz operators which do not participate in the auctions or are unsuccessful at auction, will forever be forced to remain at the same location, with the same number of channels, with no further opportunity to expand their systems. And while existing licensees are penned into a specific location, the FCC's proposals would allow the auction winner, which competes directly with the affected 800 MHz SMR small business, to force frequency migration between the entities, creating contiguous blocks of spectrum for the auction winner's future use. Accordingly, the proposed auctions are to sell occupied spectrum *and* the competitive future of hundreds of small businesses.

If these auctions occur, thereby setting a precedent for future, similar regulatory treatment, then small business must take action in the form of increased demands for additional spectrum. The competitive pressures on small business, to find a spectrum location which will

serve its needs to continue to provide competitive services to the public and allow for future growth, will drive demand. That demand will be felt by the DOC in its reallocation process.

Absent such occurrences, small business will continue to demand spectrum as its businesses grow to need additional channels. Yet, those channels obtained by small business are far more likely to be employed for the provision of services to the public than the huge spectrum blocks demanded by larger concerns. Small business demand for spectrum is a logical byproduct of public demand for services, not private demand for commodity spectrum to be warehoused on the bottom line of a corporate prospectus. It is, therefore, a healthy appetite reflecting true economic growth.

### **Demand From Displacement**

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As a byproduct of spectrum reallocation to produce the PCS spectrum blocks to bring forth that service, the FCC required that private microwave operators abandon their use of 2 GHz spectrum and accept relocation to other bands, usually within the 5 GHz band. PCS operators would finance the migration as a portion of the cost of doing business. Although vexing to many existing operators, with the cost of such migrations still being negotiated at ever higher volume levels in many quarters, the intrusion of PCS onto the 2 GHz spectrum landscape and into the marketplace was deemed feasible.

Although thousands of existing point-to-point microwave operators dot the landscape, including many public safety and local government entities, the displacement of those operators could be accomplished on to identifiable, usable spectrum. The change out would require the replacement of only two microwave facilities per path. Functionally equivalent systems could be installed to replace the old equipment. And although the debate regarding costs arising out of the obligation of PCS operators to pay for installation of repeater facilities, where the propagation of the replacement systems will not equal the path of the replaced systems, continues to delay the introduction of PCS systems, there exists a great possibility that all such problems will be eventually resolved, resulting in existing operators' ability to achieve comparable service from the changed out systems without any concurrent loss of competitiveness or reduction in technical efficiencies.

Despite the relative ease (although no frequency migration is easy on the migrating party), it would be quite naive to conclude that the displacement techniques will not have additional lasting effects on spectrum demand. PCS will occupy the spectrum block cleared, creating a demand for spectrum to relocate the existing users, which will then be relegated to other spectrum that will no longer be available for other users. Spectrum usage is not, then, initially increased as much as it is rearranged. However, it can be argued that this rearrangement is fully justified given the benefits to the American public which are expected to flow from the introduction of PCS services. Certainly it was this analysis and the impetus of federal revenue generation which overcame the existing operators' objections to displacement,

particularly in view of the federal government's ability to assure existing operators of a "safe landing" on other, comparable spectrum.

The environment for the displacement of microwave operators from one frequency band to another to accommodate future uses was a unique and nearly ideal situation. Yet, the special circumstances of that effort are being ignored in the FCC's future actions proposed within FCC Docket 93-144. Now, the FCC is planning to adopt proposals which would result in the forced frequency migration of hundreds of Specialized Mobile Radio (SMR) system operators, which serve hundreds of thousands of customers on the subject spectrum within the 800 MHz frequency band. Pointing to its previous activity in regulating PCS, the FCC is claiming that the success of that action proves that displacement of the SMR operators will net an equal success. This strange logic is quite disturbing, as it ignores the many adverse impacts on the marketplace, the federal government's ability to collect revenues, and the resulting increased demand on the DOC to bring forth additional spectrum to accommodate the displaced operators.

Important differences exist between the PCS experience and the SMR proposals. The displacement of microwave users to accommodate PCS was not intended to reduce the viability of the affected operators, was not calculated to reduce the operational flexibility of the those same operators, and would not result in a concentration of market power within one class of competitors at the expense of another class of competitors. Yet, in its zeal to raise federal revenues within the next fiscal year and to accommodate the agency's desire for certain expected

administrative efficiencies, the FCC is poised to adopt its proposals in Docket 93-144, providing the ability for successful entities at auction to relocate affected SMR operators.

Although there exists a plethora of problems which will certainly arise out of adoption of the FCC rules regarding displacement of SMR operators, the problem which will be suffered by DOC will be an arbitrary increase in the demand for spectrum allocation. The displaced SMR operators are not merely being moved to other (as yet unidentified) spectrum, their economic opportunity and competitiveness is being severely curtailed on the new spectrum. Their ability to grow, prosper, change system design, employ new technologies to gain additional operational efficiencies, and to continue their pattern of providing steadily increasing services to the public shall not be accommodated or even allowed on the exchanged spectrum. In effect, the pending legislation will freeze their ability to compete further following migration, unless their operations are migrated onto radio spectrum which enables those same operators to achieve again full competitiveness.

Those potentially displaced SMR operators and their customers, which have amply demonstrated that the services demanded are traditional, cost-effective dispatch services, cannot and will not be served by the systems envisioned by the FCC to be brought by auction winners. Therefore, the effect of the FCC's actions will result in a migration of not only a class of operators, but a displacement of an entire class of consumers which will demand that spectrum resources be created to continue the provision of those formerly available services. A review of the spectrum allocation for provision of traditional dispatch services demonstrates that there

exist no privately available sources of spectrum to accommodate the demand for these services at comparable prices to consumers. Accordingly, the actions of the FCC will result in greater pressure on the DOC to accommodate this class of consumers and operators to speed the availability of federal spectrum through reallocation.

Underlying the FCC's actions, in addition to a desire to meet the expectations to raise federal auction dollars, is the lobbying effort of a single entity, Nextel Communications, Inc. Nextel is one of the best example of the instability of the telecommunications marketplace, as it has been on a constant quest to acquire consumer numbers, spectrum, cash flow generations, and other "modern" methods of enhancing valuation, without ever showing a profit. It has extolled the virtue of its Enhanced SMR system, even claiming to one day compete directly with cellular radio systems for sales of interconnected two-way land mobile radio services. And if the FCC adopts its proposals in Docket 93-144, Nextel may be able to delay a second reckoning.

A review of Nextel's history is illustrative. Following Nextel's amazing financial success as its claims to create a "third cellular company" and to cover the landscape with signals to the millions of consumers that would flock to its services, over a year ago, Nextel hit reckoning and its stock plummeted from over 50 points a share to less than its Initial Placement Offer of 15. Literally billions of dollars in investment monies were lost by tens of thousands of investors. In the space of a few months, one fund lost over \$2.5 million and the fund manager was out of a job. A lawsuit has been launched by disappointed investors who claim that they relied on the rosy predictions of the company in its stock sales literature. The only thing that saved Nextel

from ruin was the purchase of a large equity stake by a major investor. However, that action only caused the company to be able to tread the waters of share value and keep from falling further. Even that \$1.5 billion stake couldn't encourage additional investments and cause the stock to rise.

Given the nature of the FCC's proposals for 800 MHz forced frequency migration and concurrent auctions of the realigned spectrum usage, only Nextel Communications, Inc. is positioned to gain by adoption of the FCC's proposals. Accordingly, this company which has already disappointed its investors by one severe reckoning, stands to participate in the proposed auctions to add to its illusory value via an auction purchase of market based licensing, relaxed regulatory oversight, and the ability to stymie the competition in its markets. If successful, one must imagine that Nextel's stock will again rise as investors are led to believe that Nextel's new status will translate into profitability. However, there is no indication from any source, other than Nextel's claims, that there exists sufficient demand for Nextel's proposed services to ever produce a traditional profit. Accordingly, the FCC's actions will create an environment where one of two possible outcomes will result: (1) Nextel will be allowed a second opportunity for a second reckoning, following the inflation of its stock prices which will be a direct result of its participation in the FCC auction; or (2) Nextel will avoid a second reckoning by selling its spectrum assets to another entity for purposes not reflected in the FCC's proposals contained within Docket 93-144. Regardless of Nextel's outcome, the effect on SMR operators will be devastating and will demand a provision of relief to those operators and their displaced customers.

As a source for relief, there shall be an increased demand on DOC to bring forth spectrum to the private marketplace, likely on a timetable that will not accommodate the federal government's needs to migrate logically from the spectrum. SMR operators would be required to migrate within a single year. It is logical to assume that the demand for relief from DOC will track that process, increasing to a fever pitch over that relatively short term.

One may clearly argue that the FCC's actions are not in the best interest of the marketplace, DOC or the American public. The arbitrary creation of spectrum demand creates inflationary pressures on stock prices and adds to the instability of the financial underpinnings of corporations. It sets in motion greater pressures for companies to engage in rampant spectrum speculation, obtaining blocks of spectrum assets to enhance the image of an otherwise unhealthy bottom line, and carries with it an implication of false promise that spectrum equals profit. Nextel is only one glaring example of the fact that this simplistic equation is incorrect.

### **Spectrum Policy**

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The above discussion, if accepted, begs the question of what future policy might relieve the problems experienced and threatened to date. This writer suggests that the auction of spectrum must be approached in the same manner as one would approach the introduction of money into the economy via a closely scrutinized monetary policy. Just as no logical economist would suggest that the United States auction nearly all of its gold reserves for private use, followed by a decrease in the interest rate from the federal reserve, and the introduction into the

market of abundant cheap money via the U.S. Treasury, to provide the illusion of wealth while ignoring the extreme inflationary aspects; so too must the FCC and Congress recognize that unleashing a flood of spectrum into the market has a similar effect. It provides the illusion of corporate wealth via spectrum assets, without providing concurrent profitability arising out of the production of necessary services to meet the demands of the American public.

Revenues raised from liberal auctions also give the illusion that the federal government is receiving a benefit in its efforts to curtail its debt. If, as in the proposed 800 MHz auction, money is produced from an auction of spectrum that will eventually result in investor losses, loss of employment by small business affected by frequency migration and competitive freezes, lost income to the hundreds of small providers of SMR services, catastrophic losses arising out of the rendering obsolete of customer equipment, resulting higher prices paid by former SMR customers to receive a replacement service which is undesired and more costly than the previous service (including the passing on to the consumers the cost of obtaining rights via FCC auctions), and the losses which will result from massive small business failures which cannot sustain the impact of the new regulatory paradigm, the U.S. Treasury will lose more than it gains as each adversely affected person and entity reflects the harm on their individual tax returns.

This is not to suggest that the judicious use of auctions of radio spectrum is improper. To the contrary, auctions are an improvement over lotteries, provided auctions are not allowed to fuel an overconcentration of spectrum within the hands of a limited number of entities, thus

severely diminishing competition. The PCS auctions were a successful effort of the federal government and were a laudable method of raising needed revenue. The service to be brought to the market via the auction winners will accomplish the heady goals of the FCC in encouraging that service. And the relatively minor adverse effects on the existing operators displaced by this activity are amply balanced against the gains by industry and government.

But just as a reduction in interest rates by the Federal Reserve might result in a positive effect on the nation's economy, such positive results cannot provide a basis for unleashing the inflationary monster which would result from a precipitous drop of the interest rate. And just as the FCC and Congress were successful in encouraging the auction of PCS spectrum and the attendant displacement of existing operators; such success cannot be logically employed as justification for the destruction of hundreds of small SMR businesses for the sake of delaying the reckoning of a single corporation.

The FCC has adopted proposals at 220-222 MHz and at 900 MHz for further auctions, each with differing impacts on existing operators. It has suggested that its use of auction authority will continue to increase at an increasing rate. As this momentum increases, the dangers of cheapening spectrum through corporate warehousing increase, which will have a direct effect on the level of revenues which the federal government can logically predict at future spectrum auctions. As this trend continues, the demand for additional spectrum from the federal government via DOC will likely continue and increase to satisfy the FCC's held perception that

it be focused first on the creation of auction dollars. It is unfortunate that this single yardstick appears to be, at this time, its own greatest measure of that agency's effectiveness.

It is appropriate and necessary that DOC lead the debate on future spectrum policy. The spectrum resources which will be most greatly affected are those which are employed by federal government users. The DOC is also positioned to resist the improper political and economic pressures if it is capable of demonstrating that much of the private spectrum demand which is driving the move toward reallocation is created by corporations which have little concern with production of a viable, profitable telecommunications service to offer the American public; and which, instead, employ their greater spectrum assets to create a patina of economic health and prosperity, without any intention that a profitable venture will arise from the financial manipulations. Only by recognizing the underlying problem can the DOC and the FCC begin to create assurances that the investing American public and potentially displaced operators will not continue to suffer great and devastating losses arising out of a destabilizing spectrum policy which rewards financial form over substance.

### **Conclusion**

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It is hoped that by this paper the debate can begin between the agencies of the federal government as to their combined roles and responsibilities in making available radio spectrum for auction. To those ends, the Department of Commerce and the National Telecommunications and Information Administration, are hereby invited and encouraged to become involved in FCC